IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 653 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

BAHADURSINH ABHESINH GOHIL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Revision Application No. 653 of 1999

MR NIGAM R SHUKLA for Petitioners No. 1-3

MR LR PUJARI, PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 07/12/2001

ORAL JUDGEMENT

#. Heard the learned advocates.

#. This Revision Application preferred under Section

397 read with Section 401 of the Code of Criminal Procedure arises from the judgment and order dated 5th November, 1999 passed by the learned Additional Sessions Judge, Sabarkantha below Application Ex.4 in Sessions Case No.101/1996.

#. The petitioners before this Court are the accused in the above referred Sessions Case No.101/1996. Pending this Revision, the petitioner no.2 (i.e. the accused no.2) has passed away. The prosecution against him has thus abated. All the three accused at the relevant time were police officers. The accused have been alleged to have acted in a rash manner and of intentionally killing innocent citizens under the guise of their authority as police officers. The accused have been alleged to have committed offence punishable under Sections 302, 307, 325, 34 and 120(b) of the Indian Penal Code. The said Sessions Case came to be registered against the accused pursuant to a complaint lodged by one Naranbhai Shankerbhai Patel, a resident of Village Tenpur, District Sabarkantha. The complaint says that the Bharatiya Kishan Sangh, a political party had given call for 'Bandh' on 15th October, 1993 as part of agitation against the increase in electricity tariff. Prior to the day of call (i.e. late in the evening on 14th October, 1993) some miscreants had created road blocks at Village Tenpur by uprooting some trees and electrical poles and by felling them across the road. The said road blocks were removed by the police with the help of some of the residents of Village Tenpur including the complainant. Next day in the morning (i.e. on 15th October, 1993) at around 8:30 a.m. some boys of the Village were sitting on the side of the road, while the accused no.1 came in a Jeep alongwith other two accused and some more police officers and drove the Jeep straight over the boys sitting at the road side killing one boy named Umesh Shah on the spot while one another Rajeshbhai Patel who sustained grave injuries died in the hospital. To cover the above referred act, the accused opened fire injuring some persons of the Village. It is further alleged that the Jeep was being driven by the accused no.1 himself and at the relevant time, he was in an inebriated condition. On issuance of process by the learned trial Judge, the accused moved Criminal Misc. Application No.4175/1995 under Section 482 of the Code of Criminal Procedure for quashing the proceedings before this Court. Pending the said application, the further proceedings before the trial Court was stayed. The said application was permitted to be withdrawn on 8th March, 1996. Since then, the petitioners made the above referred Application Ex.4 on 5th November, 1999, seeking discharge from the

offence and dropping of the proceedings. The said application has been rejected by the learned trial Judge on 5th November, 1999. Feeling aggrieved, the accused have preferred the present Revision Application.

#. Learned advocate Mr.Shukla has submitted that on the date of incident there was a great agitation in Village Tenpur on account of the call for 'Bandh' given by the Bharatiya Kishan Sangh. On the previous day, certain miscreants had fell green trees and had uprooted certain electrical poles damaging the public property and creating road blocks. On the next day morning (i.e. on 15th October, 1993) the mob of around 2000 to 2500 persons had gathered on the spot. The atmosphere was charged and the situation was tense. The police on duty had to call for further help. The police including the accused, when approached the spot, they were assaulted and all of them received injuries. The driver of the police vehicle, the Jeep, also received injuries on his head; thereby lost control over the vehicle which accidently ran over the deceased Umeshbhai Shah. Since the mob had gone out of control, the petitioners accused obtained permission of the Executive Magistrate, who also was present on the spot, for opening fire. Thus, the police had opened the fire in discharge of their duties to maintain public order. In the wake of such discharge of their duties, if some citizens were injured or killed, no cognizance of such offence could have been taken by the trial Court without the previous sanction of the State Government as envisaged under Section 197 of the Code of Criminal Procedure. Indisputably, in the present case, the previous sanction of the State Government as envisaged under Section 197 of the Code of Criminal Procedure has not been obtained. The process issued by the learned trial Judge, therefore, requires to be quashed and set aside and the petitioners are entitled to be discharged under Section 227 of the Code of Criminal Procedure.

#. Mr.Shukla has produced copies of all the evidence, that is produced before the learned trial Judge. He has referred to the entire evidence to establish that the accused had acted in discharge of their duties. The firing opened by the accused had direct connection with the discharge of the duties of maintaining public order. Mr.Shukla has read over the complaint lodged by the accused no.2 with respect to the damage caused to the public property (i.e. uprooting electrical poles and felling of green trees). He has strenuously urged that since the complainant and others were facing charge of causing damage to the public property and of assaulting

the police, as a counteract the complaint has been filed against the accused some two months after the date of incident. He has particularly relied upon the wireless log book to emphasize that it was with a view to controlling and disbursing the crowd that the police had opened the fire. He has also relied upon the permission granted by the Executive Magistrate on 15th October, 1993 at around 9:45 a.m. to open the fire. He has read over various statements recorded, the injury certificate to the police officers, the muddamal articles recovered from the residents of the Village etc., to bring home the case that it was the police who were assaulted by the residents of Village Tenpur and the police had to resort to the extreme means to control the crowd. In his submission, therefore, the incidence complained of occurred necessarily in connection with the discharge of their duties by the accused. No cognizance, therefore, could have been taken of the offence alleged against the accused - petitioner. The process ordered to be issued by the learned trial Judge, therefore, is illegal and improper. The same, therefore, requires to be set aside and the proceedings be dropped against the accused petitioners. In support of his argument, he had relied upon the judgment of this Court in the matter of BHIKHAJI VAGHAJI v. L.K.BAROT & ORS. [1981 GLR 956] and of the Hon'ble Supreme Court in the matters of SURESH KUMAR BHIKAMCHAND JAIN v. PANDEY AJAY BHUSAN AND ORS. [1998(1) SCC 205] and ABDUL WAHAB ANSARI v. STATE OF BIHAR AND ANR. [2000(7) Supreme 177].

#. The learned APP Mr.LR Pujari has appeared for the State and has contested the petition. He has urged that having regard to the complaint made against the petitioners, it prima facie can not be said that the incidence occurred in the manner as narrated by the petitioners. In the event the incidence occurred in the manner complained of, the accused - petitioners can not be said to have acted in discharge of their duties. In that case, no previous sanction of the State Government as envisaged under Section 197 of the Code of Criminal Procedure would be required. He too has relied upon the log book of the wireless and has submitted that the log book does not suggest that a crowd of 2000 to 2500 persons had gathered as alleged by the petitioners. On the contrary, it suggests that there were few boys sitting at the place in question. The crowd gathered on account of the incidence of some of the boys were run over by the police Jeep. If, that be the case, the petitioners can not claim protection conferred under Section 197 of the Code of Criminal Procedure. The petitioners, therefore, are required to stand the trial.

Learned APP Mr.Pujari, in support of his argument, relied upon the judgment of the Hon'ble Supreme Court in the matter of BAKHSHISH SINGH BRAR v. SMT.GURMEJ KAUR AND ANR. [AIR 1988 SC 257].

#. In the matter of Bhikaji Vaghaji (Supra), the Division Bench of this Court was concerned whether a Police Inspector can be prosecuted for an offence committed in discharge of his duty without the previous sanction as envisaged under Section 197 of the Code of Criminal Procedure. That being not the matter at issue here, the said judgment shall have no applicability.

#. In the matter of Suresh Kumar Jain (Supra), the Hon'ble Supreme Court has held that the plea of bar against the cognizance for want of sanction can be raised at any stage of proceeding. The said question also is not the matter at issue in the present proceeding. The said judgment, therefore, shall lend no support to the petition.

#. In the matter of Abdul Wahab Ansari (Supra), the Hon'ble Supreme Court was pleased to hold that the appellant who was a public servant was asked to remove some encroachment. That the appellant alongwith armed force, reached the encroachment site, several miscreants armed with weapons, started hurling stone and as the situation became out of control, after giving due warning, the appellant was compelled to give order for opening fire and dispersed the mob. On account of such firing, one of the persons died and two others were injured. While considering whether in such situation previous sanction of the appropriate Government under Section 197(2) of the Code of Criminal Procedure was required or not, the Court held that, "such previous sanction was a must. The offence alleged to have been committed by the appellant had been directed by the Sub-Divisional Magistrate to be present with police force and remove the encroachment in question and in the course of discharge of his duty to control the mob, when he had directed for opening of fire, it must be held that the order of opening of fire was in exercise of the power conferred upon him and the duty imposed upon him under the orders of the Magistrate and in that view of the matter the provisions of Section 197(1) applies to the facts of the present case." This ruling would have applied to the case of the petitioners with full force had the incidence occurred in the manner suggested by the petitioners. However, the complaint suggests to the contrary. Unless the petitioners stand a trial, the truth can not be ascertained.

#. In the matter of Bakhsish Singh (Supra), in a similar case where there were rival versions put-forth by the complainant and the accused, the Hon'ble Supreme Court held that, "it is necessary to protect the public servants in the discharge of their duties. They must be made immune from being harassed in criminal proceedings and prosecution, that is the rationale behind Sections 196 and 197. But, it is equally important to emphasise that rights of the citizens should be protected and no excesses should be permitted .... in the facts and circumstances of each case protection of public officers and public servants functioning in discharge of official duties and protection of private citizens have to be balanced by finding out as to what extent and how far is a public servant working in discharge of his duties or purported discharge of his duties, and whether the public servant has exceeded his limit."

##. On perusal of the complaint in question and the records as referred to hereinabove, I am of the view that it is too early a stage of the trial to hold that the petitioners were acting in discharge of their duties. At this stage, it is not possible to rule out the allegations made against the petitioners. In the event, the incidence occurred as complained of by the complainant, the Court may ultimately come to the conclusion that the petitioners were not acting in discharge of their duties; in that case, the petitioners would not be entitled to protection conferred under Section 197 of the Code of Criminal Procedure. Even, the post-mortem report indicates that the deceased Rajeshkumar died on account of being crushed by the Jeep tyre. At this stage, as recorded hereinabove, the petitioners can not be conclusively said to have acted in the discharge of their duties. The proceedings, therefore, can not be dropped for want of previous sanction by the State Government as envisaged in Section 197 of the Code of Criminal Procedure.

#. For the reasons recorded hereinabove, the Revision Application is dismissed. Rule is discharged. Interim order is vacated.

##. Be it noted that the incidence complained of is that of October, 1993. First, on account of pendency of application made under Section 482 of the Code of Criminal Procedure and second, on account of pendency of this Revision Application the trial has not proceeded further, and in all probability not even the charge has been framed as yet (i.e. more than eight years after the

incident). The trial Court, therefore, shall give due precedence to the present case.

##. Learned advocate Mr.Shukla requests that the stay granted pending this Revision Application be further continued for a period of ten weeks. The request is rejected.

(Ms. R.M. Doshit, J.)

/sakkaf